

Anthony Ferguson appeals his conviction of criminal recklessness, a Class D felony.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On October 23, 2007, Ferguson went to Dwayne Lipscomb's apartment, and the men drank a couple of beers together. According to Lipscomb, Ferguson wanted to use the telephone. After he finished talking on the telephone, Ferguson started to get angry and asked Lipscomb to give him a ride somewhere. Lipscomb refused, and Ferguson became angrier. Lipscomb asked Ferguson to leave, and Ferguson went to the kitchen, got a knife, and said he was "not going no f-ing where." (Tr. at 7.)

Ferguson charged Lipscomb, put him in a headlock, and punched him in the face. While they were "tussling," Lipscomb heard the knife break. (*Id.* at 10.) Lipscomb eventually broke free and called the police. Ferguson went next door to his fiancée's apartment.

Lipscomb called the police three times before they arrived. The record is unclear as to what Lipscomb said over the phone, but apparently he did not tell the police until they arrived that Ferguson had tried to stab him. Lipscomb had a cut on his arm and above his eye; he also had marks on his hands, the back of his neck, and his face. The police took pictures of Lipscomb's injuries and a broken knife.²

The police went next door and placed Ferguson in handcuffs. Ferguson had a cut between the thumb and index finger of his left hand. Ferguson told the police the argument started over a woman. He claimed Lipscomb was the one who retrieved the

¹ Ind. Code § 35-42-2-2.

² The police did not collect the knife; Lipscomb brought it with him to the trial.

knife from the kitchen and he cut his hand trying to wrench the knife from Lipscomb. Later, he told the police he hit Lipscomb because Lipscomb tried to touch his penis.

At trial, Ferguson testified the argument started because Lipscomb had called Ferguson's fiancée a bitch. He testified he had been a boxer and could "whup" Lipscomb without using a knife. (*Id.* at 34.) Ferguson again claimed Lipscomb had gotten the knife and his hand was cut when he tried to disarm Lipscomb. After a bench trial, Ferguson was found guilty of criminal recklessness.³

DISCUSSION AND DECISION

1. Sufficiency of the Evidence

Ferguson argues there was insufficient evidence to support a conviction of criminal recklessness because Lipscomb's testimony cannot be credited. In reviewing sufficiency of evidence, we do not reweigh the evidence or assess the credibility of the witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). We consider the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id.* We will affirm if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* "Within the narrow limits of the 'incredible dubiousity' rule, a court may impinge upon a [trier of fact's] function to judge the credibility of a witness." *Id.* The incredible dubiousity rule applies when "a sole witness presents inherently improbable testimony and there is a complete lack of circumstantial evidence." *Id.* The rule is rarely applied and is appropriate only when the

³ Ferguson was also found guilty of disorderly conduct based on the disturbance he made when he was placed under arrest. *See* Ind. Code § 35-45-1-3. He does not challenge that conviction on appeal.

testimony is so inherently improbable or equivocal that no reasonable person could believe it. *Id.*

Ferguson first argues Lipscomb made inconsistent statements concerning the cause of their argument. On direct examination, Lipscomb testified Ferguson got angry after he refused to give Ferguson a ride. On cross-examination, defense counsel asked Lipscomb whether he had told the police the argument was about a woman:

- Q. And when the police arrived you had told them that you guys were arguing over a female, not arguing over the fact that Mr. Ferguson wanted a ride?
- A. No, I told . . . what I stated . . . what I stated, he had disrespected a female in my home, that's what . . .
- Q. So, (unintelligible) did you tell the officer you were arguing over a female?
- A. Yes.
- Q. And on direct you said you were arguing over . . . first you got upset because he wanted a ride somewhere and you wouldn't give it to him?
- A. That's what it . . .
- Q. All right.
- A. . . . that's what it started about.
- Q. Okay.
- A. It started about . . .
- Q. All right. Well . . . thank you.
- A. Man, this is why I didn't want to get up here.

(Tr. at 18-19.) Lipscomb did not change his story; he testified the argument began over Ferguson wanting a ride and evolved into an argument about a woman.

Ferguson also claims this same excerpt of the transcript demonstrates Lipscomb was reluctant to testify. Ferguson argues that if Lipscomb were “really attacked as he testified, he would not have been hesitant to face cross-examination regarding the circumstances of the attack.” (Appellant's Br. at 9.) The State suggests Lipscomb was

expressing frustration because defense counsel interrupted his testimony. The trial court was in the best position to determine what Lipscomb meant and whether that statement impacted his credibility. Ferguson's argument is mere speculation and does not justify application of the incredible dubiousity rule.

Ferguson next argues it is improbable that he attempted to stab Lipscomb because Lipscomb did not mention it in his phone calls and the police did not collect the knife as evidence. We might lend that argument credence if there were a dispute as to whether a knife had been involved in the incident. However, both men's account of the incident involved a knife, and Lipscomb's failure to mention the knife in his phone calls does not make his testimony inherently improbable.

Finally, Ferguson emphasizes the cut on his hand, which was consistent with his testimony that he tried to wrest the knife away from Lipscomb. Ferguson characterizes Lipscomb's injuries as "scratches," (*id.*), but Lipscomb testified he raised his arms in defense and was cut on the arm. Lipscomb's testimony is consistent with the photographic evidence and is not incredibly dubious. The trial court was therefore entitled to credit Lipscomb's testimony rather than Ferguson's.

2. Self-defense

"[S]elf-defense is established if a defendant: (1) was in a place where the defendant had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm." *Brand v. State*, 766 N.E.2d 772, 777 (Ind. Ct. App. 2002), *reh'g denied, trans. denied*. Once a defendant claims self-defense, the State bears the burden of disproving at least one of the elements

beyond a reasonable doubt. *Id.* Whether a defendant acted in self-defense is generally a question for the trier of fact. *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999). The trier of fact's determination is entitled to considerable deference. *Id.* "A conviction in spite of a claim of self-defense will be reversed only if no reasonable person could say that the claim was negated by the State beyond a reasonable doubt." *Id.*

We have already concluded that the trial court was entitled to believe Lipscomb's testimony. Lipscomb testified he asked Ferguson to leave when he started to get angry. Ferguson refused to leave and charged Lipscomb with a knife. Lipscomb was unarmed, and Ferguson was, by his own calculation, stronger than Lipscomb. This evidence was sufficient to rebut Ferguson's claim of self-defense.

Affirmed.

NAJAM, J., and ROBB, J., concur.